

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2376 of 1997

with

FIRST APPEAL No 2377 of 1997

and

FIRST APPEAL No 2378 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DAHYABHAI KESHAVALAL PATEL

Versus

STATE OF GUJARAT

Appearance:

MR MEHUL SHARAD SHAH for Appellant

MR CC BHALJA, AGP, for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/09/98

ORAL JUDGEMENT

1. As these appeals have arisen from the common

judgment and award of the 2nd Joint District Judge, Mahesana in Land Reference Case No.214/90, 217/90, 216/90 and further they arise from one and the same notification under section 4 of the Land Acquisition Act, 1894 for temporary land acquisition, these appeals are taken up for hearing together and are being disposed of by this common order.

2. The facts giving rise to these appeals, in brief, are that the Project Manager, O.N.G.C., Mahesana i.e. the acquiring body had proposed for temporary acquisition of lands of Survey No.139, 134/1 to 134/3, 133 and 135/1 situated in the sim of village Bhatariya, Taluka Viramgam for Drilling purpose vide his letter dated 15-4-1985. The Special Land Acquisition Officer served notices upon owners of the lands aforesaid according to the provisions of section 35 of the Land Acquisition Act, 1894 and the possession was taken over by the acquiring body. At the time of taking over the possession of the lands in question, panchnama was prepared in the presence of officers of the acquiring body and persons interested in the land acquired. The standing crop, trees, hedge, pala etc. were mentioned in the said panchnama and approximate cost of the standing crop, hedge, Pala etc. were also mentioned by the panchas in the said panchnama. After hearing the claimants, the Special Land Acquisition Officer awarded compensation at the rate of Rs.0-48 paise per sq. mt. per year and the compensation for standing crop, trees, hedge, Pala etc.. The claimants-appellants were not satisfied with this award of the Sp. Land Acquisition Officer and at their instance, the matters were referred to Civil Court and under the impugned award, the Civil Court has awarded rental compensation for temporary acquisition at the rate of Re.1/- per sq. mt. per year and additional amount of compensation for standing crop, trees, hedge, Pala etc. The appellants dissatisfied with this award of the Civil Court, filed these appeals before this court. The appellants claimed before the Reference Court yearly rental compensation at the rate of Rs.3/- per sq. mt. per year.

3. Learned counsel for the appellants contended initially that under both the heads i.e. rental compensation and crop compensation, the additional amount awarded by the Reference Court is towards the lower side but at later point of time he has given up the claim of the appellants against the award of Reference court which relates to the grant of additional compensation under the head of crop compensation. So only claim is to that part of the award of the Reference Court where it awarded additional rental compensation at the rate of Re.1/- per

sq.mt. per year to the claimants-appellants.

4. Learned counsel for the appellants contended that the Civil Court in respect of lands of same village under its judgment and award dated 18-12-1996 awarded additional rental compensation at the rate of Rs.2-10 per sq.mt. per year and in this case also rental compensation may be awarded accordingly. Copy of the relevant award of the Civil Court i.e. 4th Extra Assistant Judge, Mahesana in Land Acquisition Reference Case No. 1327/92 to 1332/92 is placed on the record of these appeals.

5. Learned counsel for the respondents on the last date of hearing had taken the adjournment in this case to ascertain whether against the award aforesaid of the Civil court any appeal is filed before this court or not. He admits before this Court that against this award no appeal has been filed. In view of the statement of the learned counsel for the respondents, this award attained finality.

6. The acquisition of the lands in the previous award was made by O.N.G.C., Mahesana for its project in the year 1987. These lands were situated in the sim of village Bhatariya, Taluka Viramgam i.e. in the same village in which the lands which are subject matter of these appeals are situated. The Land Acquisition Officer awarded in the previous decision, rental compensation at the rate of Rs.60/- per Are per year i.e. Rs.0.60ps. per sq. mt. per year. The Reference Court relying on its previous decision enhanced the rental compensation at the rate of Rs.2-10 per sq. mt. per year. In the present case, the lands are of same village and have been acquired by the same authority for the same purpose. The acquisition in this case pertains to the year 1985 i.e. of about two years earlier to the acquisition, which is subject matter of the previous decision. There is a gap of two years in between the two acquisitions and the Sp. Land Acquisition Officer in the award which was the subject matter of previous decision awarded the rental compensation at the rate of Rs.0.60ps. per sq. mt. per year i.e. Rs.0-12-ps. per sq. mt. per year higher than what it has been awarded in the present case. Normally 10% appreciation in the price is being considered to be a reasonable criterion and if we go by that then naturally the amount of compensation awarded in the matter of later acquisition should have been higher than what it has been awarded in the acquisition of earlier period. The award of the previous case is a relevant and material evidence and it can be considered

for the purpose of ascertaining what should be the just and adequate compensation to be awarded in this case. Learned counsel for the respondents, as stated earlier, has conceded that this award attained the finality and it pertains to the acquisition of lands of same village acquired for the same purpose by the same authority. When the lands are of same village and have been acquired for temporary project of O.N.G.C. then ordinarily the rental compensation should have been awarded at the same rate. In the previous judgment, the Reference Court has considered that Rs.2-70ps. per sq.mt. per year is just, adequate and reasonable compensation to be awarded to the claimants therein. As this acquisition, which is subject matter of these appeals is of two years earlier then reasonable deduction has to be made from this amount at the rate of 10% p.a. and if we go by that deduction then Rs.0-54ps. has to be deducted from Rs.2-70 and in this case rental compensation has to be awarded at the rate of Rs.2-16ps. per sq. mt. per year. The Reference Court has awarded rental compensation at the rate of Rs.1-48ps. per sq. mt. per year and after deducting this amount, the claimants-appellants are entitled for additional compensation at the rate of Rs.0-68ps. per sq. mt. per year above what the additional compensation awarded by the Reference Court.

7. In the result, these appeals are partly allowed and the claimants-appellants shall be entitled to get an amount of rental compensation at the rate of Rs.2-16ps per sq. mt. per year for temporary acquisition of their lands and as a result thereof, they shall be entitled for additional compensation at the rate of Rs.2-16ps. Rs.1-48ps = Rs.0-68ps. per sq. mt. per year from the date of taking over the possession of their lands and handed over back to them by the O.N.G.C.. They shall also be entitled to get interest at the rate of 9% p.a. on the amount of additional compensation from the date it became due till realisation. The parties are directed to bear their own costs.

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